(24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 1121 of 2001

Appellant (In Jail) — Shatrughan Gond, son of Vinod Kumar Gond, aged about 20 years, resident of village Rameshwar Nagar, Bhanpuri, P.S. Khamartarai, Distt. Raipur, C.G.

VERSUS

Respondent — State of Chhattisgarh through P.S. Khamartarai,

Present:

Mr. M.K. Bhaduri, counsel for the appellant.

Mr. Neeraj Mehta, Panel Lawyer for the State.

ORAL JUDGMENT

(26th November 2007)

Dhirendra Mishra, J

Heard on M.Cr.P.No. 3214/2001, application for condonation of delay in filing this appeal as the same has been preferred with a delay of 27 days.

2. For the reasons indicated in the above application, it is allowed. Delay in filing the appeal is condoned.

3. With the consent of the parties, the appeal is heard finally as it is pending since 2001 and the appellant is in jail

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from the date of pronouncement of the impugned judgment dated 24.8.2001.

4. This criminal appeal is directed against the judgment of conviction and order of sentence dated 24th August 2001 passed in S.T.No. 30/97 whereby learned III Additional Sessions Judge, Raipur has convicted the appellant under Sections 363, 366, 376 (1) of the IPC and sentenced him to undergo RI for 5 years, pay a fine of Rs.500/-, RI for 5 years, pay a fine of Rs.500/-, RI for 7 years, pay a fine of Rs.1000/-, respectively and in default of payment of fine to undergo additional RI for two months, RI for two months and RI for four months, respectively. All the sentenced have been directed to run concurrently.

5. Case of the prosecution, in brief, is that on 15.11.1996 when father of the prosecutrix returned to his home after work, his wife informed that the prosecutrix has not returned after she went to fetch water. Thereafter, parents of the prosecutrix enquired about the prosecutrix in the vicinity. One Satwantinbai informed them that the prosecutrix has left the bucket in her home and told her that she is going to buy bangles. On subsequent enquiry he learnt that the prosecutrix has gone with the appellant, whereupon report was lodged on 20th November 1996 vide Ex.P/3. The prosecutrix was recovered on 21.11.1996 on being produced by Chandrika

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Singh vide recovery memo of Ex.P/8. She was sent for medical examination to Medical College Hospital Raipur where Dr. Meenakshi Dubey (PW-5) examined her and gave her report of Ex.P/9. During investigation progress report (Ex.P/5) of the prosecutrix was seized under Ex.P/4 on being produced by Roopram. Admission register (Ex.P/11) as also the certificate (Ex.P/12) issued by the Head Master of the school of the prosecutrix were seized, according to which her date of birth is 10th August 1983. The prosecutrix was sent for ossification test to Medical College Hospital Raipur, where Dr. Kamal Kumar Gajbiye (PW-10) examined her and gave his report of Ex.P/14, according to which age of prosecutrix was assessed to be 14 to 15 years. After completing investigation charge sheet was filed against the appellant before the Court of Additional Chief Judicial Magistrate, Raipur from where learned Additional Sessions Judge received the same on transfer for trial.

6. During trial 14 witnesses were examined by the prosecution. Thereafter, statement of the accused was recorded in which he denied the evidence appearing against him in the prosecution case and pleaded innocence and false implication in the above offence. However, learned trial Court after hearing counsel for the respective parties convicted and sentenced the appellant as mentioned above.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश ५	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

7. Learned counsel for the appellant submits that the trial Court has assessed age of the prosecutrix between 13-14 years on the basis of mark sheet, admission register and the certificate (Ex.P/ 12) issued by the Head Master. However, from perusal of the statement of PW-7 D.C. Sonbe, teacher, who has proved the above document it would be evident that the entries at the time of admission of the prosecutrix have not been produced and the entries produced pertain to the year 1991-92 whereas the prosecutrix was admitted in the school in the year 1983. He further contended that even father of the prosecutrix Roopram (PW-2) was not aware of the date of birth of the prosecutrix. The radiologist has assessed age of the prosecutrix between 14 to 15 years and in paragraph 2 of his statement he has admitted that there is possibility of variation of three years on either side in the assessed age.

8. It is further contended that from the statement of the prosecutrix herself it would be evident that she accompanied the appellant of her own free will to various places and in this period she did not complain to anyone about her forcible abduction. From perusal of her statement and looking to her conduct, the possibility of her being a consenting party cannot be ruled out and since the prosecution has failed to prove that she was less than 18 years on the date of incident, the appellant cannot be held guilty under the aforesaid sections.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

9. On the other hand, learned counsel appearing for the State/respondent supported impugned judgment of the trial Court.

10. I have heard learned counsel for the parties and perused the material available on record including the impugned judgment.

11. To establish age of the prosecutrix the prosecution has examined PW-2 Roopram, father of the prosecutrix and PW-7 D.C. Sonbe, Asstt. Teacher of Bhanpuri Primary School, Raipur who has proved the copy of admission register (Ex.P/11-C) and the certificate regarding date of birth of Ex.P/4.

12. PW-2 Roopram has stated that the prosecutrix is his third child and her age is 14 years. His daughter was studying in Class-V in Bhanpuri School and the certificate of her daughter in this regard is Ex.P/4 and Ex.P/5. In paragraph 19 this witness has stated that today he cannot say as to when his daughter was born, however, he remembers that she was born in the month of *Bhado*. In paragraph 20 he has stated that he had taken the prosecutrix for admission to Bhanpuri School where she pursued her studies up to Class VI. However, he has forgotten the date of her birth and it must be mentioned in the record of the school. At the time of admission he had given the approximate date of birth, which was recorded by the

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teacher. The school record shows the date of birth of the prosecutrix as 10th August 1983 and that she was admitted in Class-I in the year 1991, which has been duly proved by D.C. Sonbe (PW-7). The report of ossification test conducted by Dr. Kamal Kumar Gajbiye (PW-10) is Ex.P/14 and in the said report age of the prosecutrix is assessed as 14 to 15 years. This witness has admitted that age was assessed on the basis of radiological examination and there is possibility of three years variation on either side. Thus, from the statement of father of the prosecutrix and admission register of the school, which is a public document, the finding of the trial Court that age of the prosecutrix was less than 14 years, appears to be based on material available on record.

13. PW-1 the prosecutrix has stated that at the time of incident 1-2 days after Diwali she had gone to attend the call of nature around 1.00 in the afternoon when the accused caught her hand and took her under threat to his house and thereafter released her at about 5 o'clock. On the next day he prevailed upon her to elope with him and took her to the house of his friend at village Tulsi and thereafter, took her from there to village Dah where he resides with his mother and brothers. In village Dah he committed rape with her. He did not heed to her requests to return her to home and when her brother Chandrika came there, she went with him to her village. In

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cross-examination she has not been able to tell her date of birth and in the lengthy cross-examination she has only claimed that she was confined by the appellant under threat and he committed sexual intercourse with her.

14. The learned trial Court relying upon the statement of the prosecutrix and also considering that her statement is duly corroborated from the statement of her father, has held that the prosecutrix was subjected to forcible sexual intercourse by the appellant and has further observed that since the prosecutrix was aged about 14 years at the time of incident, notwithstanding consent of the prosecutrix, act of the accused constitutes offence under Section 376(1) of the IPC. Since age of the prosecutrix has already been held to be correctly assessed by the trial Court, findings of the trial Court whereby the appellant has been convicted under Sections 363, 366 and 376(1) of the IPC cannot be faulted.

15. In the result, the appeal being devoid of substance is liable to be dismissed and is accordingly, dismissed.

Sd/-
Dhirendra Mishra
Judge

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